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Joseph J. Laks			HENEGHAN, MATTHEW E	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/602,754

Filing Date: June 24, 2003

Appellant(s): BROWN ET AL.

Jeffrey D. Hale
Registration No. 40,012
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3 April 2008 appealing from the Office action mailed 10 October 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,654,746 McMULLAN, Jr. 8-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-8, 10, 12-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,654,746 to McMullan, Jr. et al.

As per claims 1, 2, 10, 12, and 13 McMullan discloses a game delivery system from a server (see column 4, lines 50-63) that sends downloads to remote individual game players (see column 5, lines 47-67) in which authorization is determined at a central location and sent to the subscriber system for use with the game (see column 11, lines 20-44), prohibiting access by end users as appropriate. Configuration information in the access device, which collectively constitutes a configuration file, may be modified using commands from the server (see column 17, lines 38-56). Though only writing from the server is disclosed by McMullan, this constitutes “service-provider access.” The configuration file cannot be read by the user.

As per claims 3 and 14, the access device is configured with a unique address for accepting commands, which may be used as a decryption key (security code) (see column 9, line 65 to column 10, line 8).

As per claims 4, 5, 15, and 16, the unique addresses for these commands may be factory installed or downloaded after initialization (see column 9, line 67 to column 10, line 6).

As per claims 6 and 17, several levels of security are provided for by the service provider (see column 18, lines 12-29).

As per claims 7, 8, 18, and 19, the unique addresses that have been installed at the factory or downloaded are used to enforce the levels of security (see column 8, lines 33-41).

Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,654,746 to McMullan, Jr. et al.

McMullan does not state whether the server's functionality is implemented in hardware or software, or a combination of the two.

Official notice is given that it is well-known in the art to implement computer functionalities in software, as software is less expensive to produce in complex systems and easier to maintain.

Therefore it would have been obvious to one of ordinary skill at the time the invention was made to implement the server functionality in software, as software is less expensive to produce in complex systems and easier to maintain.

(10) Response to Argument

Regarding Appellant's argument that McMullan does not disclose the designation of service provider accessible information, McMullan discloses the disabling of

hardware in a user system (see column 17, line 52) and the designation of service provider accessible data that is inaccessible to the user (e.g. keys, passwords, see column 52, lines 54-56). This constitutes the designation of "service provide accessible portions," insofar as that term is defined in Appellant's specification.

Regarding Appellant's arguments pertaining to McMullan's deletion functionality, this aspect of McMullan has not been relied upon in the grounds of rejection and therefore has no bearing upon the patentability of the claimed invention.

Regarding Appellant's argument that the setting of a new adapter address or setting of a timeout are not done to prevent access by a user, these functionalities not the only commands available and are not being relied upon in the grounds of rejection.

Regarding Appellant's argument that McMullan does not label the portions being disabled, this feature is not being claimed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Matthew Heneghan/

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